IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5901 of 1986
with
SPECIAL CIVIL APPLICATION No 5902 of 1986
with
SPECIAL CIVIL APPLICATION No 5903 of 1986
with
SPECIAL CIVIL APPLICATION No 5904 of 1986
with
SPECIAL CIVIL APPLICATION No 5905 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
   YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
   NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
   NO

5. Whether it is to be circulated to the Civil Judge? : NO
   NO

MUNICIPAL CORPORATION OF CITY

Versus

UNION OF INDIA

Appearance:

MR SB VAKIL for Petitioner
MR ASIM PANDDYA for Respondent No. 1
MR PM RAVAL for Respondent No. 2
MR KH BAXI for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE D.H.WAGHELA
Date of decision: 05/11/1999

JUDGEMENT (Per R.K.Abichandani, J.)

The Municipal Corporation of the City of Ahmedabad has in this group of petitions sought a declaration that the requirements denoted by the word "successfully" and by the words "and so long as it functions successfully" in Rule 6 of the Water (Prevention and Control of Pollution) Cess Rules, 1976 are inconsistent with the provisions of Section 7 of the Water (Prevention and Control of Pollution) Cess Act, 1977 and therefore inoperative and void. The petitioner Corporation has challenged the order dated 31st December, 1985 passed by the appellate authority and the revised assessment order dated 9th January, 1985 which was consequentially made.

2. According to the petitioner, the polluting parameters as mentioned in the conditions imposed under the consent granted to the petitioner under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and the maximum permissible limits of ranges allowed as per the consent condition were as under:

(1) B.O.D. 20 mg./l.

(2) Suspended Solids 30 mg./l.

The Legislature with a view to provide adequate funds to the State Boards for their effective functioning, enacted the Water (Prevention and Control of Pollution) Cess Act, 1977. Under the charging section 3 of the Cess Act, it was provided that there shall be levied and collected a cess for the purposes of Water (Prevention and Control of Pollution) Act, 1974 and utilization thereunder. The levy and collection of cess was made applicable not only to persons carrying on any specified industry but to every local authority and, by the Explanation contained in Section 3, it was provided that for the purposes of Section 3 and Section 4, "consumption of water" included supply of water. A provision for rebate was made in Section 7. The grievance of the petitioner is that Rule 6 of the Cess Rules exceeded the ambit of the provisions of Section 7 by limiting the entitlement to rebate till the plant functions successfully, which limitation was not contemplated by the provisions of Section 7 of the

Cess Act.

3. According to the petitioner Corporation, it had established sewage water treatment plants at Vasna and Pirana. Vasna Plant was established in 1969 for the purpose of disposal of sewage on the west of river Sabarmati and Pirana Plant was constructed during the period from 1966-1972 for the areas of the City which are to the east of Sabarmati. According to the Corporation, these plants were constructed at a huge cost of more than Rs.4 crores. The Act of 1974 came into force on 24th March, 1974, being the date on which the Corporation was already discharging sewage containing trade effluents into the Sabarmati as stated in the petition.

On 4th December, 1978, the Member Secretary of the Gujarat Pollution Control Board addressed a letter to the Municipal Commissioner requiring the Corporation to file returns in Form I prescribed under Rule 4 of the Cess Rules showing the quantity of water consumed from April 1978 onwards. The Corporation accordingly submitted the returns. Thereafter, an order was made by the Member Secretary on 19.4.1980 under Section 5 of the Cess Act read with Section 2 (b) of the Cess Rules assessing the amount of cess payable by the petitioner for the period from 1.4.1978 to 31.3.1979. Since no hearing was given to the petitioner before making of that order, Special Civil Application No.2803 of 1980 was filed by the petitioner. In that petition, a statement was made by the Counsel appearing for the Board that the assessment order which was made on 19.4.1980 would be treated only as a provisional order and that final order will be made after giving a reasonable opportunity of hearing to the Corporation. It was understood between the parties that the Corporation will make a representation against the assessment order. Accordingly, a representation was submitted by the Corporation on 29.11.1980 to the Member Secretary as per Annexure-D to the petition. They made a further representation on 14.5.1981 as per Annexure-E to the petition. After hearing the petitioner, the Member Secretary made a revised assessment order on 10.9.1981 under Section 6 of the Cess Act as per Annexure-F to the petition. The petitioner preferred an appeal against the order before the Appellate Committee. The Member Secretary on 9.1.1985 issued assessment orders under Section 6 for the respective years upto March 1983 and the petitioner preferred appeals also against those orders before the Appellate Authority. The Appellate Authority by its judgment and order dated 31.12.1985, dismissed all the appeals.

4. In its order dated 31.12.1985, the Appellate Authority held that the object of the Cess Act was to augment the resources of Water Pollution Control Boards constituted under the Act of 1974. Section 7 of the Cess Act provides for an incentive to consumers who instal treatment plants. It was held that it was not enough to put up and operate some kind of plant. The plant must yield a reasonable measure in the matter of reducing pollution. The extent to which the plant has succeeded can be measured by reference to the conditions and directives imposed by the State Board while giving consent under Section 25 (4) of the Water Act of 1974. It was held that if effluents analysed were found to be below the standards given to the Corporation, the plants installed by the Corporation cannot be said to have been successful. It was held that the words "from such date as may be prescribed" occurring in Section 7 cannot be read in isolation but have to be read subject to the general power given under Section 17 (1) of the Act, under which the Central Government may frame rules for carrying out the purposes of the Act. It was held that literal construction of the provisions of Section 7 of the Cess Act would lead to absurdity if only the installation of the plant was to be considered and not its working. The Appellate Authority held that the Act and the Rules should be read together to give the meaning intended by the Legislature and that when both are read together, the words "to instal a plant" cannot ignore successful working of a plant. The Authority noted that in para 5 of the representation of the Corporation made on 14.5.1981 it was admitted by the Corporation that percentages of removal of B.O.D. and Suspended Solids by Pirana and Vasna Sewage Treatment Plants during the years in question were not according to the directives of the consent order issued by the Board. It was held that the provision regarding rebate was introduced with a view to provide an incentive to those who refine the effluent to the required standards and, if that standard is not achieved, pollution remains. The Appellate Authority further held that pro-rata rebate cannot be allowed. Success must be achieved in relation to the prevention of pollution. In spite of installation and functioning of the plants, if the pollution remains, success cannot be said to have been achieved and, if pro-rata rebate is allowed, it would frustrate the very idea of removing pollution. The Appellate Committee opined that it was not proved by the Corporation that the plants installed by them were successful during the periods under assessment. The decision of the Member Secretary rejecting the claim to rebate was accordingly confirmed

in respect of these years.

5. The impugned order made by the Appellate Authority and the consequential assessment orders have been challenged before us by raising the following contentions:-

The learned Counsel appearing for the petitioner Corporation argued that the entitlement to get 70% rebate under Section 7 came into existence when the plant for treatment of sewage or trade effluent was installed. It was submitted under Section 7, for the purpose of eligibility, the only criterian prescribed was that any plant for treatment of sewage or trade effluent must be installed. Having laid down the criterian for eligibility, it refers to entitlement to such rebate from the date as may be prescribed by the Rules. This means that the Rule making authority was required to decide the entitlement date which may be from the date of pre, post or actual installation. It was submitted that the quantum of rebate was specifically mentioned as 70% and not upto 70% in Section 7. The learned Counsel argued that, so far as the Corporation is concerned, two such sewage plants were installed much before the coming into force of the Cess Act. These plants were meant for the treatment of sewage. It was submitted that the nature of a plant which is installed must be viewed in context of the establishment and that installation of a plant for treatment of sewage or trade effluent cannot be read in vacuum or in abstract. It was submitted that the word "treatment" in Section 7 means treatment for prevention and control of pollution and the word "control" would suggest degrees of control. It was submitted that the concept of treatment did not mean all defects should be cured. By way of an analogy, it was argued that a patient who undergoes medical treatment can be said to have been given treatment even if he does not cure. The learned Counsel further argued that the words "from such date as may be prescribed" in Section 7 have to be construed bearing in mind that a delegate cannot exceed the scope of delegation. It was submitted that the Court cannot in the process of removing absurdity or supplying omissions interpret the Rule to give a meaning which will take it beyond the scope of delegation. It was submitted that Section 7 of the Act must be interpreted according to its language alone without any addition of words because the expression "from such date as may be prescribed" occurring therein was in no way ambiguous. It was submitted that Section 7 speaks of prescribing only terminus ad quo, i.e. starting point, and did not require the rule making authority to prescribe terminus

ad quam, i.e. terminal point, for the entitlement of rebate. It was submitted that as long as installation existed, there was entitlement to rebate. It is only when eligibility ceases that entitlement would cease and eligibility would cease only when the plant ceases to be a plant or a machinery for treatment of sewage or trade effluent for preventing or controlling pollution. It was also submitted that the expression "successfully functions" in Rule 6 cannot be construed so as to mean 100% success for all the time that the plant works. The learned Counsel further argued that the Court cannot assume that the phraseology in Section 7 is mistaken. Section 7 intended to confer upon the delegate only the power to fix the date from which the entitlement would commence. It may be that the plenary Legislature for a good reason delegated only the power to prescribe the date from which the person or the local authority installing plant would be entitled to rebate and not the power to fix the date upto which the entitlement would continue. It was submitted that there can be several reasons for not delegating such power, such as (i) the plenary Legislature could have proceeded on the footing that the section itself is explicit on the period upto which the entitlement is there or, (ii) it may be wanting to watch how the provisions operate to make a provision in future or that, (iii) it might have thought if once a plant is installed as contemplated under Section 7 and expenditure is incurred, the entitlement to rebate should not cease because of its malfunctioning. It was submitted that, when several such rational explanations are available as to why the plenary Legislature has not delegated to the rule making authority the power to prescribe the period for entitlement of rebate or the terminal point, there was no question of ambiguity or absurdity in the provisions of Section 7. It was also argued that the word "control" was more qualitative than quantitative and it would be difficult, if not always impossible, to express the extent of control in mathematical terms. It was therefore argued that so long the treatment plant controls pollution, it should be considered as a plant which entitled the earning of a rebate under Section 7. It was further submitted that the provision of rebate was made not for all the polluters but only for those who instal a plant for treatment and therefore rebate was relatable to and is given as an incentive to a polluter who instals a treatment plant. If that is so, Section 7 cannot be construed, unless the language compels, so as to totally take away the incentive given to the polluter who instals a plant. If the interpretation put to Section 7 results in virtual denial of rebate, it would be self-defeating

and counter-productive. It was also argued that Section 7 provides for rebate of 70% and not upto 70% and therefore any interpretation which takes into account the concept of prescribed norms will make the provision unworkable. Consideration of prescribed norms is not warranted by the language of the section.

The learned Counsel for the petitioner Corporation in support of his arguments referred to the following decisions:

(A) SITA DEVI v. STATE OF BIHAR AND OTHERS reported in 1995 Supp (1) Supreme Court Cases 670 was cited for the proposition that clear and unambiguous language of a provision has to be given effect to despite suggested absurdity or irrationality. In that case, the Supreme Court observed that policy and the wisdom of the Legislature could not be tested by taking aid of the preamble of the Act particularly when the language of the provision was inclusive, unambiguous, specific and explicit.

(B) M/S. OSWAL AGRO MILLS LTD. v. COLLECTOR OF CENTRAL EXCISE AND OTHERS reported in AIR 1993 Supreme Court 2288 was referred to for the proposition that, where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute. The court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Strictly speaking, there is no place in such cases for interpretation or construction except where the words of statute admit of two meanings. It was held that the Court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result. The earlier decision of the Constitution Bench in Manmohan Das v. Bishun Das reported in AIR 1967 SC 643 was referred to therein for its proposition that the ordinary rule of construction of the provision of a statute is that it must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent manifest intention of the legislature from being carried out.

(C) The learned Counsel referred to BABUA RAM AND OTHERS v. STATE OF U.P. AND ANOTHER reported in (1995) 2 Supreme Court Cases 689 in which the Supreme Court held that, when the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. Such language best declares, without

more, the intention of the legislature and is decisive on it. Therefore, when the language is clear and capable of only one meaning, anything enacted by the legislature, must be enforced, even though it be absurd or results in startling consequences. The endeavour therefore must be to collect the meaning of the statute from the expressions used therein rather than from any notions which may be entertained by the court as to what is just or expedient. When two interpretations are possible, the task of the court would be to find which one or the other interpretation would promote the object of the statute, serve its purpose, preserve its smooth working, and prefer the one which subserves or promotes the object over the other which introduces inconvenience or uncertainty in the working of its system.

(D) R.RUDRAIH AND ANOTHER v. STATE OF KARNATAKA AND OTHERS reported in (1998) 3 Supreme Court Cases 23 was cited for its proposition that the principle of interpretation of statutes that plain or grammatical construction which leads to injustice or absurdity is to be avoided can be applied only if "the language admits of an interpretation which would avoid it".

(E) UNION OF INDIA AND ANOTHER v. DEOKI NANDAN AGGARWAL reported in AIR 1992 Supreme Court 96 was referred to for its holding that the Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature, the court could not go to its aid to correct or make up the deficiency. The court shall decide what the law is and not what it should be. To invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.

(F) The learned Counsel in support of his contention that the doctrine of implied power will not apply for construing Section 7 so as to read the termination point of entitlement of rebate therein, relied upon the decision of the Supreme Court in B.B.L.& T MERCHANTS' ASSOCIATION v. BOMBAY STATE reported in AIR 1962 Supreme Court 486 at page 494 wherein it was held that the doctrine of implied powers can be legitimately invoked when it is found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of any implied power, the statute itself would become impossible of compliance.

(G) The decisions of the Supreme Court in the case of COMMISSIONER OF INCOME-TAX, AMRITSAR v. STRAW BOARD MANUFACTURING CO .LTD. reported in AIR 1989 Supreme Court 1490, and, BROACH DIST. CO.OP. C.S.G. & P.S. LTD. v. INCOME TAX COMMISSIONER, AHMEDABAD at page 1493 were cited for the proposition that when a provision is made in the context of a law providing for concessional rate of tax for the purpose of encouraging an industrial activity, a liberal construction should be put upon the language of the statute.

6. The learned Counsel appearing for the respondent - Pollution Control Board contended that a treatment plant contemplated by section 7 was a plant which continues to be effective, which means it continues to achieve the standards of treatment. He submitted that mere installation of a plant was not enough. He argued that, even according to the petitioner Corporation, its treatment plant did not achieve the prescribed standards which were mentioned in the Consent of the Board issued under Sec.25 of the Act of 1974. He submitted that there was no scope for giving any pro-rata rebate or any rebate less than 70% if the plant does not function successfully even for a single day in a given month. He submitted that the Appellate Authority had acted in the lawful exercise of its powers in making the order after hearing the petitioner and there was no warrant for any interference with its decision. He relied upon the decision of the Hon'ble Supreme Court in the case of COMMISSIONER OF WEALTH TAX, ANDHRA PRADESH v. OFFICIAL -IN-CHARGE (COURT OF WARDS) reported in AIR 1977 Supreme Court 113 for its proposition that courts have to endeavour to find out the exact sense in which the words have been used in a particular context. They are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows from the terms used. They are to avoid absurd results.

The learned Counsel referred to MAHARASHTRA S.B.O.S. & H.S. EDUATION v. PARITOSH reported in AIR 1984 Supreme Court 1543 in which it was held that the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate, has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation etc. and also the

object and purpose of the Act as can be gathered from the various provisions of the enactment.

7. The learned Counsel appearing for the Union of India submitted that under Section 7 of the Cess Act, mere installation of a plant was not enough for granting rebate and something more was intended by the Parliament. He submitted that, that something more was a treatment to the trade effluent or sewage for reaching the prescribed norms. He submitted that section 7 should be interpreted in a way that does not defeat its purpose. According to him, if the entitlement to rebate was to continue even when the prescribed norms were not reached by treatment or when after installation of a plant it did not work satisfactorily, it would lead to manifest absurdity, since notwithstanding the failure of the plant, the person or the local authority, who has installed it would continue to avail the rebate on it. He submitted that the word "installed" partakes its meaning from the words "for the treatment" and that it was implicit in section 7 that the plant should be functioning and should remain functioning for the entitlement of rebate.

The learned Counsel relied upon the decision of the Supreme Court in BUDHAN SINGH v. BABI BUX AND ANOTHER reported in AIR 1970 Supreme Court 1880 in which it was held that justice and reason constitute the great general legislative intent in every piece of legislation. Consequently, where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute was not the one intended by the law-makers. The court while construing the word "held" in section 9 of the U.P.Zamindari Abolition and Land Reforms Act, 1950 held that, "by interpreting the word 'held' as 'lawfully held', we are not adding any word to the section. We are merely spelling out the meaning of that word". He also referred to AMERICAN HOME PRODUCTS CORPORATION v. MAC LABORATORIES PVT. LTD. reported in AIR 1986 Supreme Court 137, in para 66 of which the Supreme Court held that it was a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly. He also reminded us of the proposition laid down in VASWANI AND ANOTHER v. STATE OF WEST BENGAL reported in AIR 1975 Supreme Court 2473, in paragraph 7 of which referred to "context-purpose" teleological approach. It was held that "there are many canons of statutory construction,

but the golden rule is that there are no golden rules if we may borrow a Shavian epigram." He finally referred to R.S.NAYAK v. A.R.ANTULAY reported in AIR 1984 Supreme Court 684 in which it was held that the meaning of the words and expressions used in a statute ordinarily take their colour from the context in which they appear. It was held that the question of construction arises only when an ambiguity of plain meaning of the words used in the statute would be self-defeating. It was held that court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute.

8. We have kept in mind the salutary principles of interpretation to which reference is made by both the sides by citing the aforesaid decisions of the Apex Court. The provisions which require to be construed are of section 7 of the Cess Act and Rule 6 of the Cess Rules. The provisions of section 7 as it stood at the relevant time read as under:

"7. Rebate - Where any person or local authority liable to pay the cess under this Act, instals any plant for the treatment of sewage or trade effluent, such person or local authority shall, from such date as may be prescribed be entitled to a rebate of seventy per cent of the cess payable by such person or, as the case may be local authority".

Rule 6 of the Cess Rules which is in context of the Rebate provided by section 7, reads as under:

"6. Rebate - Where a consumer instals any plant for the treatment of sewage or trade effluent, such consumer shall be entitled to the rebate under section 7 on and from the expiry of 15 days from the date on which such plant is successfully commissioned and so long as it functions successfully."

A reference may also be made to the relevant provisions of section 17 of the Cess Act which empowers the Central Government to make rules for carrying out the purposes of the Cess Act.

"17. Power to make rules (1) The Central Government may make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may, provide for all or any of the following matters, namely:

(a) xxx xxx xxx
(b) xxx xxx xxx
(c) xxx xxx xxx
(d) the date from which any person or local authority liable to pay cess shall be entitled to the rebate under Sec.7;
(e) xxx xxx xxx
(f) xxx xxx xxx
(g) xxx xxx xxx
(h) xxx xxx xxx
(i) any other matter which has to be or may be prescribed"

9. The Water (Prevention and Control of Pollution) Cess Act, 1977 was enacted for the levy and collection of cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central Board and State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974 which was enacted by the Parliament under Article 252 of the Constitution with a view to control the pollution of rivers and streams. Under section 3 of the Cess Act, which provides for levy and collection of cess, it is laid down that a cess for the purpose of the Water (Prevention and Control of Pollution) Act, 1974 and utilization thereunder shall be levied and collected. Such cess is payable by every person carrying on any specified industry and also by every local authority. It is to be calculated on the basis of water consumed by such person or local authority for any of the purposes specified in column (1) of Schedule II at a rate mentioned in column (2), as the Central Government may by notification from time to time specify. For the purposes of section 3 as well as section 4 of the Cess Act, the expression "consumption of water" includes supply of water.

10. A cess is a form of taxation and the word "tax" used in its generic sense in Article 265 read with Article 366 (28) of the Constitution of India includes a cess. A cess being a tax and not a fee, no quid pro quo is necessary for maintaining the levy. It is not a levy in respect of any particular service and it would be a tax for a specific object or a particular purpose. The

provisions for levy of cess on supply of water are made with a view to augment the resources of the Boards. The cess imposed under the said Act is to be utilised for control of pollution as noted above. The idea behind giving of rebate to a person or local authority liable to pay such cess would also obviously be the control of pollution. Such a rebate would afford an encouragement to the cess payer to install a plant for treatment of sewage or trade effluents and thereby to control pollution.

11. The provisions of section 7 of the Cess Act, inter alia, require that a plant for treatment of sewage or trade effluents be installed for entitlement to a rebate of the cess payable by the local authority. The plant so installed should obviously be designed for and capable of treatment of sewage or trade effluent. Any plant which is not designed and capable of achieving this purpose, would not be a plant contemplated by this provision for earning the rebate. The idea underlying this provision appears to be to encourage installation of treatment plants so that pollution is controlled in the ultimate discharge sector.

12. A plant which due to breakdown no longer remains a plant capable of treatment of sewage or trade effluent though it may have been initially successfully commissioned, would cease to be a plant for treatment of sewage or trade effluent as it can no longer would give the desired results. Treatment of effluent is a continuous process. The effluent is successfully treated if after the treatment the discharge is answering the permissible standards or norms. The word "treatment" in the context of the expression "plant for treatment" would mean that, the process of treatment is applied to obtain a particular result. The word "treat" would in the context mean "deal with or apply a process to; act upon to obtain a particular result (see Oxford Dictionary). A plant that achieves the standards of treatment would be a plant successfully functioning. When the plant is not capable of successfully treating the sewage or trade effluent, it would cease to qualify for the rebate of cess as it cannot treat the trade effluent or sewage by removing the impurities so as to achieve the prescribed standards. There is no dichotomy of treatment plant and a successfully functioning treatment plant in section 7. Section 7 obviously entitles, a treatment plant that is functioning successfully, i.e. which treats sewage or trade effluent to reach the standards of treatment laid down by the concerned authority, to a rebate.

13. Mere physical existence of a plant at the site would not be enough to earn the rebate. It must be installed for the purpose of treatment of sewage or trade effluent. The expression "treatment of sewage or trade effluent" is to be understood in context of the standards of treatment of sewage or trade effluent to be discharged that may have been laid down by the State Board under Section 17 (1) (g) (k) of the Water (Prevention and Control of Pollution) Act, 1974. Unless those standards of treatment are achieved by the plant, it cannot be called a plant for the purpose of treatment of sewage or trade effluent. This clearly implies that the plant must successfully function for treatment of sewage or trade effluent during the period for which the rebate is sought for.

14. If mere physical placement of the plant was enough to earn a rebate, Section 7 may have simply said "from the date of such installation" and it was not necessary to leave it to the rule making authority to prescribe the date of entitlement. The rule fixing the date for the period of entitlement is obviously in furtherance of the object of Section 7 which is to give rebate for a plant that is doing its work of treatment of sewage or trade effluent as per the standards laid down for such treatment. Any other interpretation will defeat the very purpose of section 7 and unreasonably deny the cess amount to be collected for the purpose of the Water (Prevention and Control of Pollution) Act, 1974 and utilisation thereunder as envisaged by section 3 of the Cess Act.

15. The date from which a person or local authority shall be entitled to the rebate under Section 7 is to be fixed by the rule making authority by the Rules framed under Section 17 (2) (d). A date can be fixed by reference to the calendar or it can as well be fixed with reference to happening of an event or a contingency. Thus, the rule framing authority can under section 7 fix the entitlement with reference to the date from which the plant functions successfully. In such a case, the consumer will be entitled to the rebate from the date when the plant starts working successfully irrespective of the date when it was put up. When rebate is to be given from the date when the plant functions successfully for the treatment of sewage or trade effluent, it necessarily follows that the rebate will not be admissible from the date the plant stops functioning successfully. Therefore, when a Rule can be framed fixing the entitlement date to be the date from which the plant starts functioning successfully, a fortiori, the

rule framing authority can simultaneously provide in that rule that the entitlement will not be there from the date when the plant ceases to work successfully; because, if the entitlement date is the date when the plant starts effective treatment of sewage or trade effluent, there can be no entitlement from the date that it stops to effectively treat it. Rule 6 of the Cess Rules does nothing beyond this when it provides that the consumer is entitled to the rebate under section 7 from the expiry of 15 days from the date on which such plant is successfully commissioned and so long as it functions successfully. The words "successfully commissioned" and "so long as it functions successfully" occurring in Rule 6 are to be construed in the context of the requirement of section 7 so as to mean that the plant should be capable of treatment of sewage or trade effluent. If no such plant is installed or the physical installation is non-functional, there exists no successfully commissioned plant. If the plant ceases to function for the purpose for which it is designed, it no longer remains a plant for treatment of sewage or trade effluent, because it cannot give the intended result of treatment. When the date of entitlement is linked with the successful commissioning of the plant, as a necessary corollary, the entitlement would cease when the plant ceases to successfully function. The object of levy is to achieve the purposes of the Water (Prevention and Control of Pollution) Act and for utilisation thereunder as provided by section 3 of the Cess Act. The provision of rebate obviously is to encourage setting up of a plant for treatment of pollution or control and 70% of the cess levied is not collected from such consumer in order to achieve that purpose. The basis for such entitlement therefore would vanish as soon as the purpose for which the rebate is given ceases to be fulfilled. When the very basis of entitlement does not exist, then, the claim to rebate also ceases. Rule 6 is therefore designed to achieve the purposes of this Act as envisaged by sub-section (1) of section 17 read with section 3 (1) and section 7 thereof. Rule 6, in our view, therefore is in no way obnoxious and does not exceed the rule making power conferred on the authority.

16. It however cannot be the legislative intention to wholly deny the rebate on the cess payable for the entire period due to occasional failure of the plant. For example, when a part of the plant, machinery or equipment is replaced, it may entail closure for some days. The period that the plant cannot achieve its purpose of treatment of sewage or trade effluent as per the prescribed norms obviously has to be excluded for the

purpose of working out the entitlement to rebate. The period that the plant has successfully functioned cannot however be overlooked. If the entire period that the plant has successfully functioned is overlooked because it may have failed just for a single day in a month for which the returns are required to be filed in the prescribed form, that would be self-defeating for the provision of giving rebate which is intended to encourage installation and running of such plant to avoid or minimise pollution; for, in that event, no one would like to instal a plant and would rather save the entire cost of the plant instead of incurring it with the risk of not earning a rebate for the entire period due to a single and genuine breakdown for a short period. The process of examining the returns and determining the rebate entitlement should take into account consideration of these aspects for working out the entitlement to rebate for the period during which the plant has successfully worked during the period covered by the return. One cannot say that once the fixing of a plant is done, the rebate ensues notwithstanding that the plant does not function nor can one say that though it has functioned successfully throughout except for a few days, no rebate will be payable. Both extreme interpretations will lead to absurdity. The contention of the respondents that even if the plant has successfully worked, no rebate is payable should there be failure even for a single day during the period under return cannot therefore be accepted. We are not required to go into the actual calculations or entitlement for any period that the plant may have worked successfully because those would be the factual aspects covered by the decision of the Appellate Authority. If something is overlooked, then the Corporation can always draw the attention of the concerned authority to prove its claim for rebate for any period that the plant may have actually functioned successfully.

17. The question of validity of Rule 6 of the Cess Rules on the grounds on which it has been challenged before this Court was also considered by the Division Bench of the Kerala High Court in MEMBER SECRETARY, K.S.B.P.& C OF W.P. v. G.R.S. MFG. (WVG.) CO. LTD. reported in AIR 1986 Kerala 256 and the Division Bench in its detailed judgment held that Rule 6 was fully within the rule making powers of the Cess Act and the words "commissioned" and "so long as it functioned successfully" in the Rule which insist on the successful commissioning of the plant and its successful functioning are not beyond the rule making powers of the Government. For the reasons we have given hereinabove, we find

ourselves in respectful agreement with the conclusions reached in the said decision upholding the validity of Rule 6 of the Cess Rules.

18. In view of what we have said hereinabove, the challenge against the validity of Rule 6 fails. There is no warrant for interfering with the impugned orders on any of the grounds raised by the petitioner. All the petitions are, therefore, rejected. Rule is discharged in each of them with no order as to costs.

Sd/-
(R.K.Abichandani, J.)

Sd/-
(D.H.Waghela, J.)

Pronounced on
05.11.1999

(KMG Thilake)
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